THE STATE OF WYOMING

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Public Service Commission

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January 23, 1998

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William F. Caton
Secretary
Federal Communications Commission
1919 M Street NW Room 222
Washington DC 20554

RE: In the Matter of the Federal-State Joint Board on Universal Service
CC Docket No. 96-45 (Report to Congress)
Comments of the Wyoming Public Service Commission

Dear Mr. Caton:

Enclosed herein is the original and seven (7) copies of the referenced Comments of the Wyoming Public Service Commission. Thank you for your assistance in this matter.

Sincerely

Steve Oxley

STEPHEN G. OXLEY
Secretary and Chief Counsel

mj

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RECEIVED JAN 26 1998 FCC MAIL ROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	(Report to Congress)
Universal Service	)	

Comments of the Wyoming Public Service Commission

Dated: January 23, 1998

The Wyoming Public Service Commission (WPSC) hereby submits its comments to the Federal Communications Commission (Commission) in the above-captioned matter in response to the Commission's January 5, 1998, Public Notice DA 98-2 issued in connection therewith, as extended by the Commission in its Order of January 14, 1998.

The "75/25" Mechanism

1. Attached to these comments is a copy of the WPSC's July 16, 1997, Petition for Reconsideration (the Petition) in this proceeding; and that Petition should be considered an integral part of these comments. The WPSC must reemphasize strongly that the issue of the percentage of universal service support provided by federal mechanisms and the associated revenue base (generally, the "75/25" issue) remains the most critical universal service issue for Wyoming. Our arguments in the Petition unfortunately remain accurate, and they correctly describe the actual harm that will come to the people of Wyoming if the Commission does not change its position on universal service funding.

2. The Commission announced, at paragraph 267 of the May 8, 1997, Report and Order in this docket (the Report and Order), that it "appeared" that the residential benchmark should be $31 -- by itself a benign observation. However, the

WPSC has taken evidence on forward-looking economic costs which shows that the deaveraged cost of providing service in many rural areas of Wyoming exceeds $100 per customer per month (and that this figure may be too low in some cases). This evidence is not selectively stated or "edited" for effect in this proceeding before the Commission. It is a fact that Wyoming's geography, its small population and its essentially rural character combine to produce a cost-to-serve that is among the highest in the nation.

Applying the federal mechanism to our situation, if federal universal service support remains limited to 25%, our state mechanisms must generate $51.75 in support per access line per month. Because Wyoming has fewer than 300,000 access lines, the simple mathematics of this situation show that the Commission, in its 75/25 determination, has given Wyoming a burden that will drive local rates up dramatically and will cause hardship to its people. On top of this, the Commission does not believe that a transition to such a harsh regime would be needed. Petition at 3.

3. The 75/25 decision clearly violates the law. The federal Telecommunications Act of 1996 sought to create a partnership of the states and the federal government which must, as it recognized, function effectively if we are to have a technologically capable, modern telecommunications system throughout the United States. 47 U.S.C. § 254(b) required that ". . . the Commission shall base policies for the preservation and advancement of universal service" on certain clearly stated principles. The Commission's 75/25 decision violates these principles. Examples follow:

a. 47 U.S.C. § 254(b)(1) requires that "[q]uality services should be available at just, reasonable, and affordable rates." The Commission's decision would cause local service rates in Wyoming to rise both steeply and quickly, as discussed above and in the Petition, resulting in rates which are not just, reasonable or affordable.

b. 47 U.S.C. § 254(b)(2) requires that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation." By designing a federal universal service support mechanism that, in its rigidity and unfairness, does not account for the special problems faced by high-cost states, the Commission guarantees that advanced services will be provided to a lesser extent in areas in which cost problems prevent their implementation or use. The consequence, intended or not, of not recognizing the special problems faced by high cost states is to create differences among regions in the nation where Congress intended that none should exist.

c. 47 U.S.C. § 254(b)(3) requires that "[c]onsumers in all regions of the Nation, including low-income consumers and those in *rural*, insular, and *high cost areas*, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, *that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas*." Because the Commission's 75/25 constraint will not provide even minimally adequate support to rural, high cost states like Wyoming, it guarantees that Wyoming rates cannot be "reasonably comparable" to urban rates.

d. 47 U.S.C. § 254(b)(5) states the truism that state and federal universal service mechanisms must be ". . . specific, predictable and sufficient . . . to preserve and advance universal service." The WPSC submits that a mechanism which allows extremely high rates for local service in rural states will neither preserve the current level of service nor advance it in the slightest. It will "advance and preserve" moribund islands of telecommunications "have-nots" whose misfortune it is to live and work in a place which the Commission has seen fit to neglect in its provision for universal service funding support.

e. The chief statutory virtue of the Commission's current universal service funding support proposal is that it is predictable; for it is certainly not sufficient. Congress very pointedly did not direct the Commission to design a funding mechanism which was "simple", and the Commission should not elevate simplicity over the mandated effective consideration of the telecommunications needs of all of the nation. If the national universal service plan must be delayed or made more complex to follow the mandate of Congress, this should be done. If a single solution is not adequate (and the current one clearly is not), then a more complicated solution is required and should be undertaken.

The Associated Revenue Base

4. The Commission's decision to assess carrier contributions to the federal universal service funding mechanism on interstate revenues only, Report and Order at paragraph 808, contributes further to the unworkability of the Commission's "solution" to the universal service challenge. The appropriate measurement should be based on a combination of interstate and intrastate revenues to properly identify the revenues being derived by the contributing entities. Identifying only a part of the pertinent revenues could lead to unfounded objections that the *actually* required level of support for basic local exchange telecommunications rates would cause too great a burden on the federal universal service funding mechanism. Focusing only on interstate revenues creates a false understatement and would not lead to carrier contributions ". . . on an equitable and nondiscriminatory basis . . ." as required by 47 U.S.C. § 254(d). See also the Petition at pages 4-5.

Support for What?

5. The WPSC has a related concern about how the Commission would apply federal universal service support after it is collected. At paragraph 372 of its

First Report and Order adopted on May 7, 1997, in CC Docket No. 96-262 and related cases, the Commission, commenting on the transition from existing universal service support mechanisms to the new mechanism mandated by the federal Telecommunications Act of 1996, observes that ". . .we will discuss the manner in which incumbent LECs must reduce their interstate access charges to reflect the elimination of the obligation to contribute to LTS, increase their interstate access charges to permit recovery of the new universal service obligation, and, to the extent necessary, adjust their interstate access charges to account for any additional universal service funds received under the modified universal service mechanisms."

Although this First Report and Order would, at this point, apply only to one company serving in Wyoming -- U S WEST, it shows clearly that the Commission clearly intends, regardless of what limited universal service support companies actually receive under the new mechanism, that it would only be applied to reduce interstate access costs. This further limits the effectiveness of the federal universal service support proposals and adds to the existing assurance that Wyoming will suffer, against the spirit and the letter of the federal Telecommunications Act of 1996, from the imposition of a federal universal service support mechanism that does not take proper account of the problems of high-cost states such as Wyoming.

Conclusion

6. Even though the Commission has often said it does not intend to cause local rates to rise as a result of its actions, that will be the result in Wyoming if the Commission continues to insist on the 75/25 concept. Universal service requires nationwide cooperation -- that the many lower cost, generally urban, areas of the United States make individually relatively small contributions to the cost of maintaining universal telecommunications service in areas where that cost is high. Wyoming's costs are sufficiently high and its market base is sufficiently small that it does not have the ability to make up the difference between lowered federal

support levels and actual need from local resources. Local rates in Wyoming will be forced up; and our state universal service fund will not be sufficient to make up the shortfalls. The federal mechanism fails to provide adequately for such truly high cost areas and therefore fails to meet the statutory requirements of 47 U.S.C. § 254. It should be revised to alleviate the problems it will generate for high cost states.

Dated January 23, 1998.

Respectfully submitted,

STEVE ELLENBECKER Chairman	KRISTIN H. LEE Deputy Chair	STEVE FURTNEY Commissioner

CERTIFICATE OF SERVICE

I, Stephen G. Oxley, Secretary and Chief Counsel of the Wyoming Public Service Commission, do hereby certify, for myself and Carrol S. Verosky, Assistant Attorney General, that, on January 23, 1998, I filed and served true, complete and correct copies of the within and foregoing Comments of the Wyoming Public Service Commission as required by the pertinent directives of the Federal Communications Commission applicable thereto.

WYOMING PUBLIC SERVICE COMMISSION

By: ______________________________

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

PETITION FOR RECONSIDERATION

By the Wyoming Public Service Commission

Dated: July 16, 1997

The Wyoming Public Service Commission (WPSC) hereby submits its Petition for Reconsideration and requests that the Federal Communications Commission (Commission) reconsider certain provisions of the FCC Report and Order released May 8, 1997 (Order) in CC Docket No. 96-45. The WPSC previously filed Initial Comments and Reply Comments in this proceeding. Additionally the WPSC has implemented its own state Universal Service Fund and is intimately familiar with the needs of Wyoming customers regarding the affordability of telecommunications service.

In this Petition for Reconsideration, the WPSC asks the Commission to reconsider three issues of its Order as follows: (1) the federal share of universal service support which the Order sets at 25% of the computed need; (2) the reluctance of the Commission to apply the universal service fund assessment to both interstate and intrastate revenues; and (3) the increases in subscriber line charges. These issues are addressed below in order of priority. The most important issue to Wyoming consumers is the maintenance of affordable telecommunications services through the Universal Service Fund.

Federal Share of Universal Service Support

When developing policies for the "preservation and advancement of universal services"[1], the Commission was to adhere to the principle that the funds constitute a specific and predictable support mechanism[2]. The language at this section of the federal Telecommunications Act of 1996 states, "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." The current Order does not follow this principle, especially at paragraph 269 of the Order where the Commission concludes that "...the federal share of the difference between a carrier's forward looking cost of providing supported services and the national benchmark will be <u>25 percent</u>." (Emphasis supplied). Twenty-five percent is completely insufficient to advance or preserve universal service in a largely rural state such as Wyoming. It appears that the Commission's rationale for this decision to limit federal universal service fund support to 25% is to mirror the current 25% loop cost allocation assigned to the interstate jurisdiction through its Part 36 separations rules. If this assumption is the case then the WPSC respectfully submits that there is not a relevant comparison between the jurisdictional allocation of loop costs and the level of federal universal service fund support. If it is no more than a determination not to be responsible for a fair share of the cost of universal service; it simply runs contrary to the Act and this Commission's clear mandate.

Additionally, implementation of the Order will violate three provisions of the 1996 Act. Section 254(b)(3) of the Act calls for universal support mechanisms that will result in "...access to telecommunications and information service... that are reasonably comparable...and that are available at rates that are reasonably comparable...for similar services in urban areas". Section 254(b)(5) requires mechanisms that are "sufficient" in terms of preserving and advancing universal service. With 75% of the high costs being borne by intrastate resources, these two provisions cannot be met. The reality of this framework is that intrastate rates in need of support will be driven to even higher levels to cover an allocated share of the support mechanism.

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[1] 47 USC 254(b)

[2] 47 USC 254(b)(5)

In formal hearings the WPSC has taken evidence on forward-looking cost studies[3] showing that the deaveraged cost of providing service to many of the rural areas in Wyoming exceeds $100 per customer per month. The WPSC continues to examine these cost studies but for illustrative purposes, if the monthly long-run economic cost is $100, the residential benchmark is $31[4], and if only 25% is supported by the federal fund, this leaves an amount of $51.75 per month to be supported by intrastate universal service funds. With fewer than 300,000 access lines in Wyoming, it is unthinkable to expect that the full amount of this support will be borne by an intrastate universal service fund without having a debilitating impact on local rates. The Universal Service Fund is insufficient and must be reconsidered in order to follow the spirit and letter of the federal Telecommunication Act of 1996.

It is even more and potentially damaging for a significant change in support, such as the one proposed in the Order, to occur without a transition period. When the Commission modified the cost allocations moving from subscriber plant factor ("SPF") to subscriber line usage ("SLU"), it changed the interstate portion of the allocation from as much as 85 percent down to a frozen allocator of 25 percent. This was done over an eight year transition period, giving states and companies time to absorb the changes and to modify their practices as to mitigate the impact on local customer rates. In this case the impact of the interstate funding being changed is equally as significant as the prior allocation change for some states, yet the Commission proposes to make this change with no transition period or phase-in. Local rates will be seriously impacted immediately unless the state universal service fund will be able to absorb the change. The state universal service

[3] One recent run of the Hatfield model showed that more than 19,000 customers out of a total of 150,000 customers would have total element long-run incremental costs of $132 per month for U S WEST's service area in Wyoming.

[4] Report and Order in Docket No. 96-45, paragraph 267.

fund in Wyoming will not be able to accommodate this dramatic of a change in such a short time frame, if ever. Absent these funds, the customers of Wyoming will have to bear the costs directly.[5]

Third, as indicated above a significant increase in support funding will be required from intrastate sources that will not be comparable to like requirements in other states. This violates the principle contained in the federal Telecommunications Act of 1996 at Section 254(b)(4) wherein "All providers of telecommunications services should make an **equitable and nondiscriminatory** contribution to the preservation and advancement of universal service." (Emphasis added). With 75% of the high costs being bourne by intrastate sources, the WPSC fails to see how any of these provisions can be met in a manner reflecting legislative intent.

Application of the Surcharge to Only Interstate Revenues

The second issue for reconsideration is the Commission's statement at paragraph 808 where the Order stated:

> "We have decided to continue to assess carriers' contributions for the high cost and low-income support mechanisms based only upon the carriers' interstate revenues because we want to continue to work with the Joint Board on this issue to develop a unified approach to the low-income and high cost mechanisms and because we believe that in the meantime states will continue to provide for the high cost and low-income mechanisms in such a manner that the mechanisms will be sufficiently funded."

It is unclear whether this statement is directly related to the issue of the federal share of support. If Universal Service is to be sufficiently funded (which the WPSC believes is not

[5] The Wyoming universal service fund is structured to provide support to customers whose rates are greater than 130% of the statewide average rate. However, if the statewide average rate increases, generally driven by increases in U S WEST's rates, then all rates increase prior to support being provided to individual high rate area customers.

possible based on the Order), then the combined use of interstate and intrastate revenues will provide a more appropriate funding assessment base.

The WPSC supports the additional principle of competitive neutrality added by the Commission as an underlying principle guiding its decisions in this proceeding.[6] Competitive neutrality must be clearly incorporated into the ability to receive universal service support from the fund and the obligation to contribute to the fund. Competitive neutrality requires that no contributing carrier be advantaged or disadvantaged by the contribution system established by the Commission. The best and only method to achieve this objective is to assess a carrier's contribution on interstate and intrastate retail revenues. The combined retail revenue approach is a contribution mechanism which is equitable and nondiscriminatory.

We also question the wisdom of delaying a decision on this issue of the funding base, and are especially concerned about the logic used in the above quote from paragraph 808 of the Order. While it is true that, on an intrastate level, Wyoming is working within the provisions of our state statutes to provide support to customers in areas with high rates, this is **not** justification for creating an additional burden and shifting it to the intrastate jurisdiction where it will ultimately be paid by end use customers through local rates. We agree with the need to eliminate implicit support mechanisms from intrastate services and are working to make those supports explicit. However, additional support should be made available through the federal fund, in order to keep local rates affordable. This needed support should be funded through both interstate and intrastate rates, so as to provide a large enough funding base so no carrier is disadvantaged through its provision of primarily interstate or intrastate services.

Subscriber Line Charge

In its Order, the Commission modifies the application of subscriber line charges to multi-line business and additional (secondary) residential lines. We see two problems with this

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[6] See paragraph 47-48 of the May 8, 1997 Report and Order, Docket No. 96-45.

mandated increase. First, customers often have difficulty differentiating this federally mandated charge from the local rates under state jurisdiction and thus, this is seen as a local rate increase. Second, there are enforcement issues that will arise from the Commission's decision on this issue, and the Commission has not addressed who will be responsible to assure that the Commission's mandates on this issue are properly carried out.

The Commission has continually stated that the intent of its decisions is to avoid causing local rate increases. Increases to subscriber line charges are viewed by the customer as local rate increases, which will be the subject of heightened discussions between customers and state commissioners. It is a charge that local customers pay just for having a telephone line, whether or not they made any interstate calls or used any interstate services. The subscriber line charge appears on local telephone bills, not on long distance bills; and therefore the charge has the look and feel of a local rate increase. The WPSC objects to the charge for the above stated reasons.

Additionally, the WPSC sees the Commission's decision in this matter as administratively burdensome. There will be erroneous billings and operational difficulties associated with applying different subscriber line charges to different residential lines. For example, if a customer has a winter home in the territory of company A and a summer home in the territory of company B, which is the secondary line? Is self reporting the contemplated answer to this question? If so, then the state commissions must insure that the second line is charged the higher amount. This level of scrutinization is unworkable.

Of utmost importance to the WPSC is the decision to limit universal service fund contributions to interstate service support to 25% of those costs above the nationwide average revenue benchmark. In doing so, the Commission has arbitrarily eliminated a long standing source of contributions essential to the successful implementation of the federal statutory mandate for universal telephone service especially in those states where the population is low and the costs are high. Absent adequate support, which must be granted by this Commission, the mandate will not be fulfilled.

For the reasons stated above, the Wyoming Public Service Commission respectfully requests that the Commission grant reconsideration.

Dated: July 16, 1997

WYOMING PUBLIC SERVICE COMMISSION

Carrol S. Verosky

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CERTIFICATE OF SERVICE

The undersigned, being the attorney for the Wyoming Public Service Commission in the above-captioned proceeding hereby certify that the within and foregoing Petition for Reconsideration of the Wyoming Public Service Commission was filed and served as required by the Federal Communications Commission therein on July 16, 1997.

WYOMING PUBLIC SERVICE COMMISSION

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